

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

DOUGLAS ROY LINMAN and
VICKIE LYNN LINMAN

Bankruptcy No. 98-03770S

Debtor(s).

Chapter 7

Contested No. 9030

ORDER RE: MOTION TO AVOID LIENS AND OBJECTIONS TO HOMESTEAD EXEMPTION

On March 12, 1999, debtors Douglas and Vickie Linman filed a motion to avoid the judgment liens of Kent Feeds, Berne Cooperative Association, and Hemer Farm Supply under 11 U.S.C. § 522(f). The motion alleged that the judgment liens impaired their claims of exemption in their homestead. Linmans attached to their motion a legal description of three parcels of property that have since been referred to as Parcels A, B and C. Creditors Berne Coop and Hemer Farm Supply resisted the motion on the ground that Parcel C is not contiguous with the other two and is not part of the homestead. An error in the legal description was corrected by amendment filed July 30, 1999. A survey of the legal description, as corrected, shows an irregularly shaped gap between Parcels B and C, which is 40 feet wide at the narrowest point.

A hearing on the motion was held July 13, 1999, followed by an opportunity to submit briefs and affidavits. Linmans argued that, despite the gap, the parcels were contiguous within the meaning of Iowa Code § 561.1. They argued, alternatively, that they had an equitable interest in the property between Parcels B and C sufficient to support a claim of homestead, so that all parcels were contiguous.

On August 20, 1999, the court issued a memorandum order determining that Parcels B and C were not contiguous. The court postponed deciding the alternative issue, because Linmans had not yet scheduled an interest in the gap property. The court allowed Linmans additional time to list their claimed interest in the property and to claim it exempt.

On September 10, 1999, Linmans amended their lien avoidance motion, Schedule A and Schedule C to include an additional parcel of real estate adjoining the southern border of Parcel B (the "additional parcel"). They claim the property is exempt as part of their homestead. Hemer Farm Supply and Berne Coop object. Because Hemer Farm Supply is not a judgment creditor, its objection will be treated as an objection to the claim of exemption in the additional parcel.

Hearing on the objections was held on October 6, 1999 in Sioux City. Donald H. Molstad appeared for the debtors. Peter A. Goldsmith appeared for Hemer Farm Supply. Debtor Douglas Linman

testified at the hearing. In 1982, he acquired three parcels of real property as a gift from his mother, Virginia Linman. She is still living. His home is located on part of the property; another part is timber land. At the time of the gift, he thought he had received contiguous parcels of real estate and believes his mother intended to give him three contiguous parcels. He did not learn that there was a gap between the parcels until after filing his bankruptcy petition. The land in the gap consists of rough, untillable land. Two steep-banked creeks join in this area. Linman uses the gap property for parking junked equipment.

Hemer Farm Supply's Exhibit 1 and Linmans' Exhibit E were introduced as interpretations of the survey of the claimed homestead including the additional parcel. Hemer Farm Supply contends the amended legal description leaves a gap of 20 feet between the parcels. Linmans say the parcels are now contiguous. These matters are core proceedings pursuant to 28 U.S.C. §§ 157(b)(2)(B) and (K).

Discussion

The debtor bears the burden of proof of each element of lien avoidance under 11 U.S.C. § 522(f). In re Streeper, 158 B.R. 783, 786 (Bankr. N.D. Iowa 1993). Although Fed.R.Bankr.P. 4003(c) places the burden of proof in an exemption dispute on the objecting creditor, the burden of going forward with evidence shifts to the debtor if the objector rebuts the debtor's prima facie showing of entitlement to the exemption. In re Bennett, 192 B.R. 584, 586 n.9 (Bankr. D. Me. 1996). Prior to the October 6 hearing, the evidence in this case showed that Linmans are entitled to claim homestead exemptions only in Parcels A and B. Parcel C is not contiguous, and other land claimed exempt is titled in Virginia Linman. Linmans were obliged to offer evidence that they are entitled to a larger homestead exemption.

In its August 20 decision, the court stated that if Linmans had an equitable interest in the gap property sufficient to support a homestead claim, Parcel C would then be contiguous with the other property. No one directly addressed the issue at the October 6 hearing. Linmans did not identify more particularly the legal theory under which they claim an equitable interest in the property.^(u)

Linmans state that Virginia Linman intended to give her son contiguous parcels of land in 1982. This was not done. The first issue is whether Linmans have a real property interest in the land between the parcels because of this circumstance. If so, the next issues are whether their interest is sufficient to support a homestead claim, and whether there are intervening interests that would cut off their right to obtain legal title to the property. If Linmans did not acquire an interest in the additional parcel of real property sufficient to support a homestead, the parties' competing surveys are irrelevant.

The court noted in the August 20 order the possibility that Linmans had a claim to obtain legal title to the gap property through an action against Virginia Linman for reformation of the deed. Upon further research of the issue, and considering the evidence at the October 6 hearing, however, the court concludes that Linmans did not acquire an equitable interest in the additional parcel. They did not have a real property interest in the gap property at the time of the filing of their bankruptcy petition. Therefore, Parcel C is not contiguous with the homestead. Linmans' exempt homestead is limited to Parcels A and B. Their motion to avoid liens will be denied as to other property.

Reformation of an instrument is an equitable remedy which may be obtained to correct a mistake in a written document. The remedy does not change the terms of an agreement. Rather, it corrects the instrument memorializing the agreement to conform to the parties' actual agreement. Hosteng Concrete & Gravel, Inc. v. Tullar, 524 N.W.2d 445, 448 (Iowa App. 1994). One who seeks

reformation of an agreement must establish the true agreement of the parties by "clear, satisfactory and convincing proof." Id. "A court of equity interferes to correct a mistake in a written instrument only in furtherance of justice and to prevent fraud or some injustice." Dolph v. Wortman, 185 Iowa 630, 168 N.W. 252, 253 (1918) (quoting Enos v. Stewart, 138 Cal. 112 (1902)). The right to reform an instrument is subject to the discretion of the equity court and "depends on whether the remedy is essential to the ends of justice." Hosteng Concrete & Gravel, 524 N.W.2d at 448.

A court of equity has authority to reform a deed to correct a mistake in describing the property. Olsen v. Olsen, 236 Iowa 313, 18 N.W.2d 602, 604 (1945). Generally, the effect of a reformation decree is the correction of the instrument, relating back to the date of the original document, which is "binding upon all except bona fide purchasers without notice and those standing in similar relations." M.T. Straight's Trust v. Commissioner of Internal Revenue, 245 F.2d 327, 329 (8th Cir. 1957).

Availability of the remedy is doubtful when the transaction at issue is a gift of real property. See generally 66 Am.Jur.2d, Reformation of Instruments (1973), § 42 Voluntary Instruments (stating as general rule that equity will not reform a gift "at the suit of the grantee as against the grantor"). In some circumstances, a court may reform a deed upon the grantor's request. Westcott v. Westcott, 259 N.W.2d 545, 548 (Iowa App. 1977) (grantor was entitled to reform deed granting larger estate than intended); Davidson v. Lane, 566 S.W.2d 891, 892 (Tenn. App. 1978) (grantor's heirs entitled to reform deed to restrict use of land to cemetery). The remedy is generally not available, however, in an action brought by the grantee. "[I]t is well settled that courts of equity will not assist the grantee in an imperfect conveyance which is not supported by either valuable or meritorious consideration against either the grantor or his representatives." Else v. Kennedy, 67 Iowa 376, 25 N.W. 290, 292 (1885); accord Trustees of Synod of Reformed Presbyterian Church of North America v. Horel, 235 Iowa 281, 16 N.W.2d 209, 214 (1944) (following Else v. Kennedy); American Savings Bank v. Borcherding, 201 Iowa 765, 208 N.W. 518, 519 (1926) (same). It is not an injustice to refuse a grantee's request to correct a deed, because he has given no consideration and has lost nothing. Trustees v. Horel, 16 N.W.2d at 214; Dolph v. Wortman, 168 N.W. at 253 (quoting Enos v. Stewart); see also 66 Am.Jur.2d Reformation of Instruments, § 42 (grantor, not bound to make the gift, is not obliged to correct a defect).

Linmans, grantees in a voluntary conveyance, have not shown that they have a right to have legal title transferred to them through reformation of the 1982 deed. A court of equity might deny a request for reformation, even if Virginia Linman consented, because of intervening interests such as interests of her creditors. See id., § 42 n.98, § 69 n.61 (citing Turner v. Newell, 129 Ga. 89, 58 S.E. 657 (1907)). Moreover, a court might refuse to correct the deed because Virginia Linman could give an additional gift of land if she desires. It is in the discretion of the court to determine whether the remedy is essential to the ends of justice. Hosteng Concrete & Gravel, 524 N.W.2d at 448.

The court concludes that Linmans did not have an equitable interest in the additional parcel of real estate at the time of their filing. Their exempt homestead consists of Parcels A and B; the motion to avoid judgment liens will be granted only as to those parcels. Because the rationale of the ruling on lien avoidance applies equally to defaulting judgment creditor Kent Feeds, the order as to the lien of Kent Feeds should be consistent with the order regarding Berne Coop. See Hawkins v. Buena Vista College (In re Hawkins), 187 B.R. 294, 301-02 (Bankr. N.D. Iowa 1995) (despite default by student loan creditors, complaint dismissed as to all defendants).

ORDER

IT IS ORDERED that the Linmans' motion to avoid lien is granted in part and denied in part. The judgment liens of Berne Cooperative Association, Case No. LACV 022048, and Kent Feeds, Case No. LACV 013016, both arising in the Iowa District Court for Ida County, in real property referred to as Parcels A and B and legally described in attached Exhibit 1, are avoided. The motion is denied as to all other real property claimed exempt.

IT IS FURTHER ORDERED that the objections of Berne Cooperative Association and Hemer Farm Supply to the amended claims of exemptions filed September 10, 1999, are sustained. Linmans' homestead exemption consists of Parcels A and B, legally described in attached Exhibit 1.

SO ORDERED THIS 21st DAY OF OCTOBER 1999.

William L. Edmonds
U.S. Bankruptcy Judge

1. Debtors' counsel suggested that Linmans might have a claim to obtain title by adverse possession, but he did not pursue the theory. A person claiming title under adverse possession must establish, by "clear and positive" evidence, the elements of hostile, actual, open, exclusive, and continuous possession, under claim of right or color of title for at least ten years. Mitchell v. Daniels, 509 N.W.2d 497, 499 (Iowa App. 1993).